

The complaint

Mr D complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") entered into a Conditional Sale Agreement with him without carrying out sufficient affordability checks.

What happened

In September 2015, BPF entered into a conditional sale agreement for the purchase of a car. The price of the vehicle and associated insurances was £13,050.00 and no deposit was paid so the full amount was financed. The total charge for the credit came to £4,228.20. The total amount to pay for the vehicle was £17,278.20. This was to be repaid in 60 monthly instalments of £286.32.

Mr D had some difficulties making his repayments and he has shown that he took the car off the road in January 2019 before voluntarily terminating the agreement in March 2019.

In January 2024, Mr D complained saying he should not have been provided with the finance agreement in the first place. BPF issued two final response letters – the latest in July 2024. BPF explained why it wasn't going to uphold Mr D's complaint and unhappy with this response, Mr D referred the complaint to the Financial Ombudsman.

The investigator then upheld Mr D's complaint. The investigator concluded the credit check results received by BPF showed Mr D was reliant on payday lending and so the loan wasn't affordable. In order to put things right for Mr D the investigator recommended BPF refund the payments he made minus a figure for fair usage, the Investigator said paying for 50 months of usage was reasonable.

BPF agreed with the investigator's assessment to uphold the complaint and it made an offer to put things right. Mr D agreed that the complaint should be upheld but disagreed with how BPF should put things right for him.

Firstly, he said that the vehicle was off the road from January 2019, he provided evidence of this and He also said the investigator had miscalculated the number of months he had used the vehicle for – he only had it for just under 42 months.

Mr D said to put things right, all of the interest and fees he was charged should be returned and he reiterated that as he had tried to prioritise paying the car payments over his other debits which led him to borrow further.

BPF then amended its offer in line with the Investigator's suggestion. Having reviewed the statement of account, it could see in total Mr D had paid £11,789.13. BPF then said a fair usage figure of around £250 per month would be applied – for the 42 months Mr D had the car. Meaning Mr D would need to pay BPF £10,500. BPF offered to refund the difference between this figure and what Mr D had paid it – plus 8% simple interest, to not collect any outstanding balance and to remove any adverse information recorded on Mr D's credit file.

Mr D didn't agree with the updated offer saying using a different fair usage figure the refund should be just under £2,800. As the investigator wasn't persuaded to alter their assessment, the complaint has been passed to an ombudsman for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As both parties agree, the finance agreement wasn't affordable for Mr D and shouldn't have been advanced, I don't need to determine this matter. I instead need to decide what is fair and reasonable for BPF to do, to put things right for Mr D, in the circumstances of his complaint.

I'm also sorry to hear about the impact that this agreement has had on Mr D's mental health, I do hope he's received the help and support that he has needed and things have improved for him.

What I've decided BPF needs to do in order to put things right

I've thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean BPF putting Mr D in the position he'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending where goods are involved this isn't straightforward. Mr D did enter into the agreement and was, at least, given and used the car in question. I can't undo what's already been done and it's simply not now possible to put Mr D back in the position he would be in if he hadn't been given the agreement in the first place.

I've carefully considered what Mr D has said in response to the assessment by the Investigator – that being he should receive a refund of all the interest fees. But I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case such as Mr D having access to the car and using it.

Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

In this case, this would limit Mr D to paying back the £13,050 BPF originally lent to him. But I don't think that a refund of the interest fees and charges is appropriate here. Mr D no longer has the vehicle because he handed the car back in March 2019. So as Mr D didn't take ownership of the car and he hadn't pay BPF enough to cover the capital cost of the car – the £13,050 lent.

I've therefore given careful thought to how else it might be fair and reasonable to put things right for Mr D. In circumstances where a borrower was provided with finance to purchase a

car they were unable to afford to make the payments for, it's usually appropriate for the car to be returned and the agreement ended – which has already happened.

As Mr D will have had the car for a period of time, I do think that it is fair to take account of the fact the car will have depreciated in this time and that Mr D will have had the use of it. So, I do think it's fair and reasonable to expect Mr D to have to pay an amount to account for this - but this should be capped at 42 months – which is the period of time Mr D had possession of the car. Even though I acknowledge Mr D couldn't use the car from January 2019 it still nonetheless remained in his possession.

It's also fair to say that there isn't an exact formula for working out a fair usage amount – and so there is no exact calculation or guidelines that I'm able to provide Mr D. This is because the figure that maybe used can be slightly different for each case depending on a number of factors. When considering what is fair usage some of the factors that maybe considered are what sort of costs he might have incurred to stay mobile if he didn't have this car but an equivalent, the type agreement, the monthly repayment and the cost of the finance.

It's also possible that Mr D feels each payment he has made to the agreement should become in effect interest free. But I also have to consider the type of car Mr D had as well as the likely monthly cost to put him in an equivalent vehicle.

In this case, the investigator has said that a fair monthly usage figure – bearing in mind this agreement kept Mr D mobile, should be around £250. I've thought about this, and considering the monthly cost of the agreement, and how much it may have cost Mr D to acquire an equivalent car the £250 monthly usage fee seems fair and reasonable to me.

Given Mr D had access to the car for 42 months it therefore follows that he should have to pay BPF £10,500 for the time that he had use of the car. If Mr D had already paid BPF more than this – he should then receive the difference as a refund plus 8% simple interest from the date that he paid BPF £10,500 until the date of settlement. This is what BPF has already agreed to do, and so I consider this offer to be fair and reasonable.

BPF has already agreed to remove any adverse information reported about the agreement from the credit file, this is in line with our approach to these sort of cases – especially where a refund is due. So, I make no further award about this.

Finally, I've considered what Mr D has told us about the long-term impact this agreement had on him and that he needed to borrow from other payday lenders and he was using a significant portion of his income each month. While, I've considered this, I don't think it was foreseeable by BPF that Mr D would carry on taking payday loans and so I'm not making any further award beyond what BPF has already agreed to pay him.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr D in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

BPF has already made an offer that is fair and reasonable to resolve the complaint, so to put things right it should do what it has agreed to do;

- Refund Mr D £1,289.13 – which is the difference between the fair usage figure of £10,500 and the amount Mr D has paid BPF which is £11,789.13.
- To this sum it should also pay 8% simple interest per year from the date the refund

arose to the date of settlement*

- Write off any outstanding balance there may be due.
- Remove any adverse information about this agreement from Mr D's credit file.

*HM Revenue & Customs requires BPF to take off tax from this interest. BPF must give Mr D a certificate showing how much tax it's taken off if he asks for one.

I understand Mr D wants the funds to be paid into a different account than BPF has the details for. If Mr D accepts this decision, he should provide BPF with the account details for where he wants the money to be paid.

My final decision

For the reasons I've outlined above, I am upholding Mr D's complaint.

Clydesdale Financial Services Limited trading as Barclays Partner Finance should put things right as it has already agreed to do and what is outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 June 2025.

Robert Walker
Ombudsman